

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS  
CHAPTER 8, ENTITLED “EROSION AND SEDIMENT CONTROL  
AND STORMWATER MANAGEMENT”  
TO CONFORM WITH REQUIREMENTS OF STATE  
LAW AND REGULATIONS.

BE IT ORDAINED by the Mayor and City Council of Gaithersburg, in public meeting assembled, that Chapter 8 of the City Code entitled “Erosion and Sediment Control and Stormwater Management” is hereby repealed and reenacted with amendments to read as follows:

**CHAPTER 8 EROSION AND SEDIMENT CONTROL  
AND STORMWATER MANAGEMENT**

**Article I. General**

**§ 8-1 Definitions**

**Article II. Sediment Control**

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- § 8-3 Scope
- § 8-4 Exemptions
- § 8-5 Variances
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Removal of Same from Public Property; Costs of Removal Constitute Lien on  
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## ARTICLE I. GENERAL

### Sec. 8-1. Definitions.

For the purposes of this chapter the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Administration.* Administration means the Maryland Department of the Environment (MDE) Water Management Administration (WMA).

*Adverse impact.* Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses. Such deleterious effect is or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

*Agricultural land management practices.* Those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. Logging and timber removal operations may not be considered a part of this definition.

*Applicant.* Any person who executes the necessary forms to procure official approval of a project or a permit to carry out construction of a project.

*Aquifer.* A porous water-bearing geologic formation generally restricted to materials capable of yielding an appreciable supply of water.

*Architect.* An architect duly registered by the state to practice professional architecture, including landscape architecture, in accordance with the provisions of Article 56 of the Annotated Code of Maryland, 1957 (1979 Replacement Volume), as amended.

*Best Management Practice (BMP).* A structural device and/or sediment and erosion control and stormwater management practice approved by the City Director of Public Works to mitigate adverse effects of land use activities, runoff, sedimentation and non point source pollution on stream banks, stream hydrology, surface and groundwater quality, stream habitat, aquatic life and vegetation and ground water replenishment.

Channel Protection Storage Volume (Cpv). The volume used to design structural management practices to control stream channel erosion. Methods for calculating the channel protection storage volume are specified in the 2000 Maryland Stormwater Design Manual, Volumes I & II.

*City.* The City of Gaithersburg, Maryland.

*City Manager.* The City Manager or his designee.

*Clear.* Any activity which removes the vegetative ground cover, shrubs, or trees.

*Clearing.* The removal of trees and brush from the land, but shall not include the ordinary mowing of grass.

*County.* Montgomery County, Maryland.

*Department.* The State of Maryland Department of the Environment.

*Design Manual.* The 2000 Maryland Stormwater Design Manual, Volumes I & II that serves as the official guide for stormwater management principles, methods, and practices.

*Detention structure.* A permanent structure for the temporary storage of runoff which is designed so as not to create a permanent pool of water.

*Develop land.* To change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial or institutional construction or alteration.

*Developer.* A person undertaking or for whose benefit any or all the activities covered by this article are commenced or carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

*Development.* A project consisting of buildings, structures and other improvements, or components thereof, upon any lot, tract or parcel which is either subdivided or unsubdivided.

*District.* The Montgomery Soil Conservation District.

*Drainage area.* The area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

*Easement.* A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

*Engineer.* Means a professional engineer registered in the State of Maryland.

*Erosion.* The process by which the land surface is worn away by the action of wind, water, ice or gravity.

*Erosion and sediment control.* A system of structural, vegetative and land management measures that minimize soil erosion and off-site sedimentation.

*Erosion and sediment control plan.* An erosion and sediment control strategy or plan, to minimize erosion and prevent off-site sedimentation by containing sediment on-site or by passing sediment-laden runoff through a sediment control measure, prepared and approved in accordance with the specific requirements of the District and this article, and designed in accordance with the standards and specifications.

*Excavation.* Any act, or the conditions resulting therefrom, by which soil, earth, sand, gravel, rock or similar material is cut into, dug, quarried, uncovered, removed, displaced or relocated, and shall include mining as defined in Section 15-801 through 15-834 of the Environmental Article of the Annotated Code of Maryland.

*Exemption.* Those land development activities that are not subject to the ~~[erosion and sediment]~~ control requirements contained in this ~~[article]~~ chapter.

*Extended detention.* A stormwater design feature that provides gradual release of a volume of water in order to increase settling of pollutants and protect downstream channels from frequent storm events. Methods for designing extended detention BMPs are specified in the Design Manual.

*Extreme flood volume ( $Q_f$ ).* The storage volume required to control those infrequent but large storm events in which overbank flows reach or exceed the boundaries of the 100- year floodplain.

*Fence, approved.* A permanent, semipermanent or portable fence, not more than seventy-two (72) inches in height, so constructed and so located as shall be approved in the permit application to surround sediment basins, steep excavations or ponding areas where it is necessary for the safety of members of the public.

*Fill.* Any act, or conditions resulting therefrom, by which soil, earth, sand, gravel, rock or any similar material is deposited, placed, pushed, pulled or transported.

*Flow attenuation.* Prolonging the flow time of runoff to reduce the peak discharge.

*Grade.* To cause disturbance of the earth. This shall include, but not be limited to, any excavating, stripping, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.

*Infiltration.* The passage or movement of water into the soil surface.

*Land Disturbing Activity.* Any earth movement or land changes which may result in soil erosion or the movement of sediments into waters of the State or onto other lands, including, but not limited to, tilling, clearing, grading, excavating, stripping, filling and related activities. Land disturbing activity also includes the covering of land surfaces with any structure of impermeable material, regardless of whether the land surface itself remains permeable or impermeable.

Provided that the resurfacing of an existing impervious area ~~and home gardening of areas less than 5,000 square feet in area~~ shall not constitute a new land disturbing activity.

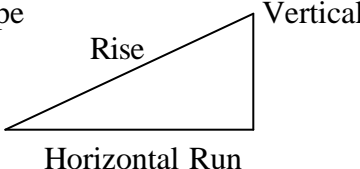
Off-site ~~[storm water]~~ stormwater management. The design and construction of a facility necessary to control storm water from more than one development.

On-site ~~[storm water]~~ stormwater management. The design and construction of systems necessary to control ~~[storm water]~~ stormwater within an immediate development.

Overbank flood protection volume ( $Q_p$ ). The volume controlled by structural practices or earth movement to prevent an increase in the frequency of out of bank flooding generated by development. Methods for calculating the overbank flood protection volume are specified in the Design Manual.

Owner. The owner or owners of a site on which grading or other land disturbing activity is, will, or has been, done.

Percent slope. Defined as vertical rise in feet divided by horizontal run in the steepest 100-foot segment multiplied by 100 percent.



$$\text{Percent slope} = \left[ \frac{\text{Vertical rise} \times 100 \%}{\text{Horizontal run in the steepest 100 foot segment}} \right]$$

Permit. A sediment control, grading, building permit or other permit, as may be appropriate within the context of the specific provision of this chapter.

Permittee. Any person to whom a building or grading permit has been issued.

Person. Includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

~~[Plan. A sediment control plan submitted in accordance with the provisions of this chapter as a prerequisite to obtaining an approved sediment control plan.]~~

~~[Porous paving. An open graded asphaltic or reticular concrete or other material which allows water to pass through it.]~~

Predevelopment state. Pristine or meadow in good hydrologic condition.

Professional Engineer. An engineer duly registered by the State of Maryland to practice

professional engineering in accordance with the provisions of Title 14, Business Occupations and Professions Article, Annotated Code of Maryland.

Professional Land Surveyor. A land surveyor duly registered in the State of Maryland to practice professional surveying in accordance with the provisions of Title 15, Business Occupations and Professions Article, Annotated Code of Maryland.

Recharge volume ( $Re_y$ ). That portion of the water quality volume used to maintain groundwater recharge rates at development sites. Methods for calculating the recharge volume are specified in the Design Manual.

Redevelopment. Any construction, alteration, or improvement exceeding 5000 square feet of land disturbance performed on sites where existing land use is commercial, industrial, institutional or multifamily residential.

Responsible personnel. Any foreman, superintendent or project engineer who is in charge of on-site clearing and grading operations or sediment control associated with earth changes or disturbances.

Retention structure. A permanent structure that provides for the storage of runoff by means of a permanent pool of water.

Retrofitting. The construction of a structural BMP in a previously developed area, the modification of an existing structural BMP, or the implementation of a nonstructural practice to improve water quality over current conditions.

Sediment. Soils or other surficial materials transported or deposited by the action of wind, water, ice, gravity or artificial means.

Sediment control plan. A strategy or plan designed to minimize erosion, prevent off-site sedimentation and control stormwater. The plans shall contain erosion and sediment control measures, and stormwater management where required, and shall be prepared and designed in accordance with this Chapter, City regulations, and applicable State laws and regulations, including applicable standards and specifications.

Slope. The inclined exposed surface of a fill, excavation, or natural terrain, or the steepness of that surface, expressed in terms of the ratio of horizon distance to vertical rise, or in terms of percentage.

Site. ~~[Any tract, lot or parcel of land or combination of tracts, lots or parcels of land which are in one ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision or project.]~~ Site means:

- (a) for “new development” any tract, lot, or parcel of land or combination of tracts, lots, or parcels of land, which are in one ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision, or project.
- (b) For “redevelopment” the area of new construction as shown on an approved site plan; or the original parcel. Final determination of the applicable are shall be made

in accordance with Section 8-22 of this chapter.

Soil. Any earth, sand, gravel, rock or other similar material.

Stabilization. The prevention of soil movement by any of various vegetative and/or structural means.

Standards and specifications. ~~[The "1983 Maryland Standards and Specifications for Soil Erosion and Sediment Control" or any subsequent revisions.]~~ The standards and specifications relating to erosion and sediment control and/or stormwater management, that may now or hereafter be established and/or adopted by the ~~[Maryland] Department [of the Environment]~~.

Steep slope. A slope in which the percent slope equals or exceeds 25 percent.

Stormwater management means:

- (a) For quantitative control, a system of ~~[land management]~~ vegetative, earthen and structural measures that control the increased volume and rate of surface runoff caused by manmade changes to the land; and
- (b) For qualitative control, a system of vegetative, earthen, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

Stormwater management plan. A set of drawings or other documents submitted by a person as a prerequisite to obtaining a ~~[storm water]~~ stormwater management approval, which contain all of the information and specifications pertaining to ~~[storm water]~~ stormwater management.

Stripping. Any activity which removes the vegetative surface cover including tree removal, clearing, grubbing and storage or removal of topsoil.

Variance. Modification of the criteria set forth in the standards and specifications.

Waiver. The relinquishment from ~~[storm water]~~ stormwater management requirements by the City of Gaithersburg for a specific development on a case by case review basis.

(a) Qualitative stormwater management waiver includes water quality volume and recharge volume design parameters.

(b) Quantitative stormwater management waiver includes channel protection storage volume, overbank flood protection volume, and extreme flood volume design parameter.

Watercourse. Any natural or man-made watercourse including but not limited to streams, rivers, creeks, ponds, lakes, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes in which water flow in a definite direction or course, either continuously or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or flood water.

Watershed. The total drainage area contributing runoff to a single point.

Water quality volume (WQ<sub>v</sub>). The volume needed to capture and treat the runoff from 90 percent of the average annual rainfall at a development site. Methods for calculating the water quality volume are specified in the Design Manual.

*Wetlands*. Any area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.

## ARTICLE II. SEDIMENT CONTROL

### Sec. 8-21. Purpose and authority.

The purpose of this article is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with accelerated soil erosion and resultant sedimentation. Minimizing soil erosion and off-site sedimentation will minimize damage to public and private property, and assist in the attainment and maintenance of water quality standards. The provisions of this chapter are pursuant to Title 4, Environment Article, Subtitle 1, Annotated Code of Maryland, and are duly authorized by the City of Gaithersburg, and shall apply to all grading and similar activity occurring within the City of Gaithersburg, except as otherwise excepted in this chapter. The application of this chapter and the relevant provisions expressed herein shall be the minimum erosion and sediment control requirements, and shall not be deemed a limitation or repeal of any other powers granted by state law or regulation.

### ~~Sec. 8-2. Definitions.~~

~~For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:~~

~~*Adverse impact*. Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses. Such deleterious effect is or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which unreasonably interferes with the enjoyment of life or property, including outdoor recreation.~~

~~*Agricultural land management practices*. Those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. Logging and timber removal operations may not be considered a part of this definition.~~

~~*Applicant*. Any person who executes the necessary forms to procure official approval of a project or a permit to carry out construction of a project.~~

~~*Architect*. An architect duly registered by the state to practice professional architecture, including landscape architecture, in accordance with the provisions of Article 56 of the Annotated Code of Maryland, 1957 (1979 Replacement Volume), as amended.~~

~~*Best Management Practice (BMP)*. A structural device or nonstructural practice~~



~~designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.~~

~~City. The City of Gaithersburg, Maryland.~~

~~City Manager. The City Manager or his designee.~~

~~Clear. Any activity which removes the vegetative ground cover, shrubs, or trees.~~

~~County. Montgomery County, Maryland.~~

~~Department. The State of Maryland Department of the Environment.~~

~~Developer. A person undertaking or for whose benefit any or all the activities covered by this article are commenced or carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.~~

~~Development. A project consisting of buildings, structures and other improvements, or components thereof, upon any lot, tract or parcel which is either subdivided or unsubdivided.~~

~~District. The Montgomery Soil Conservation District.~~

~~Drainage area. The area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.~~

~~Engineer. Means a professional engineer registered in the State of Maryland.~~

~~Erosion. The process by which the land surface is worn away by the action of wind, water, ice or gravity.~~

~~Erosion and sediment control. A system of structural, vegetative and land management measures that minimize soil erosion and off-site sedimentation.~~

~~Erosion and sediment control plan. An erosion and sediment control strategy or plan, to minimize erosion and prevent off-site sedimentation by containing sediment on-site or by passing sediment-laden runoff through a sediment control measure, prepared and approved in accordance with the specific requirements of the district and this article, and designed in accordance with the standards and specifications.~~

~~Excavation. Any act, or the conditions resulting therefrom, by which soil, earth, sand, gravel, rock or similar material is cut into, dug, quarried, uncovered, removed, displaced or relocated, and shall include mining as defined in Section 15-801 through 15-834 of the Environmental Article of the Annotated Code of Maryland.~~

~~Exemption. Those land development activities that are not subject to the erosion and sediment control requirements contained in this article.~~

~~Fence, approved. A permanent, semipermanent or portable fence, not more than seventy-two~~

~~(72) inches in height, so constructed and so located as shall be approved in the permit application to surround sediment basins, steep excavations or ponding areas where it is necessary for the safety of members of the public.~~

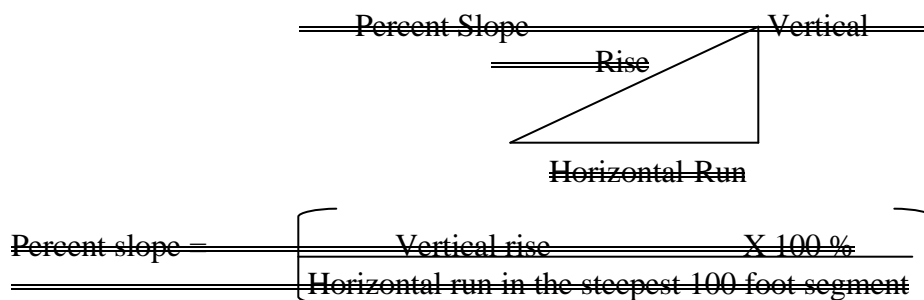
~~**Fill.** Any act, or conditions resulting therefrom, by which soil, earth, sand, gravel, rock or any similar material is deposited, placed, pushed, pulled or transported.~~

~~**Grade.** To cause disturbance of the earth. This shall include, but not be limited to, any excavating, stripping, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.~~

~~**Land Disturbing Activity.** Any earth movement or land changes which may result in soil erosion or the movement of sediments into waters of the State or onto other lands, including, but not limited to, tilling, clearing, grading, excavating, stripping, filling and related activities. Land disturbing activity also includes the covering of land surfaces with any structure of impermeable material, regardless of whether the land surface itself remains permeable or impermeable. Provided that the resurfacing of an existing impervious area [and home gardening of areas less than 5,000 square feet in area] shall not constitute a new land disturbing activity.~~

~~**Owner.** The owner or owners of a site on which grading or other land disturbing activity is, will, or has been, done.~~

~~**Percent slope.** Defined as vertical rise in feet divided by horizontal run in the steepest 100-foot segment multiplied by 100 percent.~~



~~**Permit.** A sediment control, grading, or building permit, as may be appropriate within the context of the specific provision of this chapter.~~

~~**Permittee.** Any person to whom a building or grading permit has been issued.~~

~~**Person.** Includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.~~

~~**Plan.** A sediment control plan submitted in accordance with the provisions of this chapter as a prerequisite to obtaining an approved sediment control plan.~~

~~**Professional Engineer.** An engineer duly registered by the State of Maryland to practice~~

~~professional engineering in accordance with the provisions of Title 14, Business Occupations and Professions Article, Annotated Code of Maryland.~~

~~*Professional Land Surveyor.* A land surveyor duly registered in the State of Maryland to practice professional surveying in accordance with the provisions of Title 15, Business Occupations and Professions Article, Annotated Code of Maryland.~~

~~*Responsible personnel.* Any foreman, superintendent or project engineer who is in charge of on-site clearing and grading operations or sediment control associated with earth changes or disturbances.~~

~~*Sediment.* Soils or other surficial materials transported or deposited by the action of wind, water, ice, gravity or artificial means.~~

~~*Sediment control plan.* A strategy or plan designed to minimize erosion, prevent off-site sedimentation and control stormwater. The plans shall contain erosion and sediment control measures, and stormwater management where required, and shall be prepared and designed in accordance with this Chapter, City regulations, and applicable State laws and regulations, including applicable standards and specifications.~~

~~*Slope.* The inclined exposed surface of a fill, excavation, or natural terrain, or the steepness of that surface, expressed in terms of the ratio of horizon distance to vertical rise, or in terms of percentage.~~

~~*Site.* Any tract, lot or parcel of land or combination of tracts, lots or parcels of land which are in one ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision or project.~~

~~*Soil.* Any earth, sand, gravel, rock or other similar material.~~

~~*Stabilization.* The prevention of soil movement by any of various vegetative and/or structural means.~~

~~*Standards and specifications.* [The "1983 Maryland Standards and Specifications for Soil Erosion and Sediment Control" or any subsequent revisions.] The standards and specifications relating to erosion and sediment control and/or stormwater management, that may now or hereafter be established and/or adopted by the [Maryland] Department [of the Environment].~~

~~*Steep slope.* A slope in which the percent slope equals or exceeds 25 percent.~~

~~*Variance.* Modification of the criteria set forth in the standards and specifications.~~

~~*Watercourse.* Any natural or man-made watercourse including but not limited to streams, rivers, creeks, ponds, lakes, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes in which water flow in a definite direction or course, either continuously or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or flood water.~~

~~Watershed. The total drainage area contributing runoff to a single point.~~

~~Wetlands. Any area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.~~

### **Sec. 8-3. Scope.**

No person shall clear or grade land without implementing approved soil erosion and sediment controls in accordance with the requirements of this article except as provided within section 8-4.

### **Sec. 8-4. Exemptions from plan approval.**

Exemptions from plan approval shall be granted for the following activities.

(a) Agricultural land management practices and construction of agricultural structures.

(b) Single-family residences, their accessory buildings, and paved surfaces with areas of disturbance less than five ~~[twenty]~~ thousand 5,000 ~~[(20,000)]~~ square feet are required to submit a standard sediment control agreement as set forth on such form as the City Manager designates within the state department of environment, article 4.

(c) Clearing or grading activities that disturb less than five thousand (5,000) square feet of land area and disturb less than one hundred (100) cubic yards of earth.

(d) Clearing or grading activities that are subject exclusively to state approval and enforcement under state law regulations.

### **Sec. 8-5. Variances.**

The ~~[district]~~ City may grant a written variance from the requirements of the standards and specifications if strict adherence to the specifications will result in unnecessary hardship and not fulfill the intent of this article. The developer shall submit a written request for a variance to the ~~[district]~~ City. The request shall state the specific variances sought and reasons for requesting the variance. The ~~[district]~~ City shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the developer.

### **Sec. 8-6. Erosion and sediment control plans.**

(a) *Review and approval of erosion and sediment control plans.*

(1) A person may not clear or grade land without first obtaining an erosion and sediment control plan approved by the ~~[district]~~ City.

(2) Clearing and grading of sites greater than 5 acres of land must be phased to minimize the total amount of disturbed land on the site at any one time.

(3) The applicant shall submit an erosion and sediment control plan and any supporting

computations to the ~~[district]~~ City for review and approval. The erosion and sediment control plan shall contain sufficient information, drawings, and notes to describe how soil erosion and off-site sedimentation will be minimized. The ~~[district]~~ City shall review the plan to determine compliance with this article and the standards and specifications prior to approval. The plan shall serve as a basis for all subsequent grading and stabilizing, and clearing and grading contrary to the plan is prohibited.

- (4) In approving the plan, the ~~[district]~~ City may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of this article, the state sediment control regulations, Code of Maryland Regulations (COMAR) 26.~~09~~17.01, the standards and specifications, or the preservation of public health and safety.
- (5) The ~~[district]~~ City shall notify the applicant of approval or reasons for the disapproval or modification within forty-five (45)~~[thirty (30)]~~ days after submission of the completed erosion and sediment control plan. If a decision is not made within forty-five (45)~~[thirty (30)]~~, the ~~[district]~~ City shall inform the applicant of the status of the review process and the anticipated completion date. The erosion and sediment control plan shall not be considered approved without the inclusion of the signature and date of signature of the ~~[district]~~ Director of Public Works, or designee, on the plan.
- (6) Approved plans may remain valid for two (2) years from the date of approval unless renewed by the ~~[district]~~ City.

(b) *Contents of the erosion and sediment control plan.* The applicant is responsible for submitting an erosion and sediment control plan which meets the requirements of ~~[the district]~~ this article, the State sediment control regulations COMAR 26.~~09~~17.01 and the standards and specifications. The plan shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation. The applicant shall certify on the drawings that all clearing, grading, drainage, construction and development shall be conducted in strict accordance with the plan. Applicants shall submit the following information:

- (1) A letter of transmittal;
- (2) A vicinity sketch indicating north arrow, scale and other information necessary to easily locate the property;
- (3) A plan at an appropriate scale approved by the City indicating at least:
  - a. Name, address and telephone number of:
    1. The owner of the property where the grading is proposed;
    2. The developer; and
    3. The applicant.

- b. The existing and proposed topography.
- c. The proposed grading and earth disturbance including:
  - 1. Surface area involved;
  - 2. Volume of spoil material;
  - 3. Volume of borrow material; and
- d. Storm drainage provisions, including:
  - 1. Velocities and quantities of flow at outfalls; and
  - 2. Site conditions around points of all surface water discharge from the site.
- e. Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation including:
  - 1. Provisions to preserve topsoil and limit disturbance;
  - 2. Details of grading practices;
  - 3. Design details for structural controls; and
  - 4. Details of temporary permanent stabilization measures including placement of the following on the plan:

Following initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed within:

- (a) Seven (7) calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes greater than three horizontal to one vertical (3:1);
- (b) Fourteen (14) days as to all other disturbed or graded areas on the project site; and
- (c) Maintenance shall be performed as necessary to ensure that the stabilized areas continuously meet the appropriate requirements of the "1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control."

The requirements of subsections (3)e.4.(a) and (3)e.4.(b) do not apply to those areas which are shown on the plan and are currently being used for material storage or for those areas on which actual construction activities are currently being performed or to interior areas of a surface mine site where the stabilization material would contaminate the recoverable resource.

- f. Sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, as a minimum, include a schedule and time frame for the following activities:
  - 1. Clearing and grubbing for those areas necessary for installation of perimeter controls;
  - 2. Construction of perimeter controls;
  - 3. Remaining clearing and grubbing;
  - 4. Road grading;
  - 5. Grading for the remainder of the site;
  - 6. Utility installation and whether storm drains will be used or blocked after construction;
  - 7. Installation of stormwater management facilities;
  - 8. Installation of impervious areas;
  - 9. Final grading, landscaping or stabilization; and
  - 10. Removal of sediment controls.
- g. A statement placed on the plan indicating that the developer shall request that the City approve work completed in accordance with the approved erosion and sediment control plan, the grading or building permit, and this article.
  - 1. On all sites with disturbed areas in excess of two (2) acres, approval of the inspection agency shall be requested upon completion of installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance, excavation or grading. Other building or grading inspection approvals may not be authorized until this initial approval by the inspection agency is made; and
  - 2. Approval shall be requested upon final stabilization of all sites with disturbed areas in excess of two (2) acres before removal of controls.
- h. Certification by the owner or developer that any clearing, grading, excavation, construction, or development, or all of these, will be done pursuant to this plan and that responsible personnel involved in the construction project will have a certification of training at a ~~[department of natural resources]~~ Maryland Department of the Environment~~[al Protection]~~ approved training program for the control of sediment and erosion before beginning the project. The certification of training for

responsible personnel requirement may be waived by the ~~[district]~~ City on any project involving four (4) or fewer residential units.

- i. Any additional information or data deemed appropriate by the ~~[district]~~ City.

(c) *Modifications to erosion and sediment control plans.* The ~~[district]~~ City may revise approved plans as necessary. Modifications may be requested by a permittee, the City Manager and the ~~[city]~~ Director of Public Works.

## **Sec. 8-7. Permits.**

(a) *Required.* No person shall do any clearing, excavation or grading of land without first obtaining a permit from the City and without implementing soil erosion and sediment controls in accordance with the requirements of this article or any standards, rules or regulations promulgated hereunder.

- (b) *Application.*

(1) To obtain a permit required by this article, an applicant shall first file an application therefor in writing upon forms furnished by the City. The application shall be signed by the owner of the property, or an authorized agent, where the work is to be performed. If the owner is a corporation, it shall be signed by the president or vice-president, attested by the secretary or assistant secretary and the corporate seal affixed. The application shall be accompanied by scale plans or drawings, including an erosion and sediment control plan, the permit fee and a bond or other security as required in section 8-8. The plans accompanying the application shall be prepared and certified by a professional engineer, professional land surveyor, landscape architect, ~~[architect]~~ or other person qualified in the State of Maryland and approved by the City Manager.

~~(2) [Prior to the issuance of a grading or building permit pursuant to this article, a copy of the application and plan shall be referred to the district for review and approval of the proposed erosion and sediment control measures, and the district shall notify the city of their recommendations or approval, or both, so that the applicant may be notified in a timely manner.]~~

(2) Prior to the issuance of a grading or building permit pursuant to this article, the provisions, if applicable, of Chapter 22, "trees and forest conservation," and the Environmental Standards Regulations must be complied with.

(c) *Expiration and renewal.* The building or grading permit shall expire two (2) years from the date of issuance unless extended or renewed by the City. Application for permit renewal shall be made at least two (2) months prior to the permit expiration date.

(d) *Permit fee.* A permit fee schedule may be established by resolution of the Mayor and City Council for the administration and management of the erosion and sediment control program. Capital improvement projects, refuse disposal areas, sanitary landfills and public works projects shall be exempt from the permit fee.



(e) *Suspension and revocation.* The City may suspend or revoke any grading or building permits after providing written notification to the permittee based on any of the following reasons:

- (1) Any violation(s) of the terms or conditions of the approved erosion and sediment control plan or permit;
- (2) Noncompliance with violation notice(s) or stop work order(s) issued;
- (3) Changes in site characteristics upon which plan approval and permit issuance was based;
- (4) Any violation(s) of this article or any rules and regulations adopted under it;
- (5) Any material misrepresentation in the application for a permit or the undertaking of work pursuant to a permit.

(f) *Conditions.* In granting any permit pursuant to this article, the City Manager may attach such conditions thereto as may be reasonably necessary to prevent danger to persons or to public or private property or any sewer, storm drain or watercourse, or to prevent the operation from being conducted in a manner likely to create a nuisance. Such conditions may include, but are not limited to, the erection or installation of walls, fences, drains, dams and structures, plantings and vegetation, erosion and sediment control and ~~[storm-water]~~ stormwater management measures or devices, furnishing necessary easements and a specified method of performing the work. No permit shall be issued and no clearing, grading or excavation undertaken, except for testing purposes, until an erosion and sediment control plan is approved by the ~~[district]~~ City. The erosion and sediment control plan shall be a condition of the permit. No person shall violate any such condition so imposed.

#### **Sec. 8-8. Performance bond.**

(a) The City Manager shall, before issuing a permit under this article, require a cash bond, corporate bond, letter of credit or other appropriate security in a form satisfactory to him and approved by the City attorney, conditioned upon the faithful performance of the conditions in the permit and soil erosion, sediment control and ~~[storm-water]~~ stormwater management measures specified in the permit within the time specified by the City Manager or within any extension thereof granted by the City Manager in the amount of the total estimated cost of all erosion, sediment control and ~~[storm-water]~~ stormwater management measures and safeguards for the adjoining property. The City Manager may grant a waiver of such bond, letter of credit or other security upon application, after receiving recommendations from the ~~[district]~~ Director of Public Works, where there is minimal impairment of existing surface drainage, minimal erosion hazard and minimal sedimentation hazard upon any adjacent land or watercourse and no hazard to human life or property. A corporate bond shall be maintained and renewed annually and shall be executed by a surety or guaranty company qualified to transact business in the ~~[S]~~ State. A cash bond or letter of credit shall be deposited with the City reciting that the cash has been deposited in compliance with and subject to the provisions of this article. The bond, letter of credit or other security shall obligate the principal, his executors, administrators, successors and assigns, jointly and severally with the surety, and shall inure to the benefit of the City, its officers and employees and to any person aggrieved by the principal's failure to comply with the conditions thereof. The

principal and the surety shall, under the bond, letter of credit or other security, continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses or liabilities which may be incurred or expended by the City to meet the minimum requirements of this article.

(b) Whenever the City shall find that a default has occurred in the performance of any term or condition of the permit or bond, written notice thereof shall be given to the principal and to the surety of the bond. Such notices shall state the work to be done, the estimated cost thereof and the period of time deemed by the City to be reasonably necessary for the completion of such work.

(c) If a cash bond, letter of credit or other security has been posted, notice of default as provided by the preceding paragraphs shall be given to the principal, and if compliance is not had within the time specified, the City shall proceed without delay and without further notice or proceedings whatsoever to forfeit and convert and use the cash deposited, or any portion of such deposit, or other security to cause the required work to be done, by contract or otherwise, in the discretion of the City Manager.

(d) In the event of any default in the performance of any term or condition of the permit or the bond, letter of credit or other security, the City, the surety or any person employed or engaged on his behalf shall have the right to go upon the site to complete the required work or make it safe. In the event the City undertakes the work or to make the site safe with the funds from the forfeited cash or corporate bond, such funds shall be used to pay the cost of contracting, including engineering and administration, for restoration of the site to meet the requirements of the permit, bond or this article. If the cost of the work or making it safe exceeds the amount of the cash or corporate bond, letter of credit or other security, the permittee shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the City. The costs and expenses shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such costs are due and payable. The costs shall be listed on the tax bill and shall be collected in the manner of ordinary taxes.

(e) No person shall interfere with or obstruct the ingress or egress to or from any such site or premises by an authorized representative or agent of any surety, or of the City, engaged in completing the work required to be performed under the permit or in complying with the terms or conditions thereof.

(f) A corporate bond or letter of credit shall remain in full force and effect, until completion of the work in accordance with section 8-15. A cash bond or other security shall be returned upon depositor's request to the depositor or to his successors or assigns upon completion of the work approved by the City in accordance with section 8-15, except any portion thereof that may have been used. Subsequent to the completion of work, the City Manager is authorized to declare as abandoned and forfeited, any cash bond posted pursuant to a requirement of this chapter, and relinquish proceeds thereof to the general treasury of the City, when after giving the depositor or permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such depositor or permittee fails to request of the City the return of the cash bond. Upon failure to request of the City return of the cash bond, as provided herein, the depositor or permittee, its successors or assigns, heirs and assigns relinquish all claim to said

cash bond.

**Sec. 8-9. Liability insurance.**

If, in the opinion of the City Manager the nature of the work is such that it may create a hazard to human health, life or safety or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other public property, the City Manager may, before issuing a permit under this article, require that the applicant for a permit file a certificate of insurance showing that he is insured against claims for damages for personal injury and property damage in an amount not less than fifty thousand dollars (\$50,000.00), including damages to the City by deposit or washing of material onto City streets or other public improvements, which may arise from or out of the performance of the work, whether such performance is by himself, his subcontractor or any person directly or indirectly employed by him, and the amount of such insurance shall be prescribed by the City Manager in accordance with the nature of the risks involved. Such insurance shall be written by a company licensed to do business in the state and approved by the City. Neither issuance of a permit nor compliance with the provisions hereto or any condition imposed by the City shall relieve any person from any responsibility for damage to persons or property otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

**Sec. 8-10. Inspections.**

*(a) Inspection frequency and reports.*

- (1) The permittee shall maintain a copy of the approved erosion and sediment control plan on site.
- (2) On all sites with disturbed areas in excess of two (2) acres, the permittee shall request that the City Manager inspect work completed at the stages of construction specified below to ensure accordance with the approved erosion and sediment control plan, the grading or building permit and this article.
  - a. Upon completion of installation of perimeter erosion and sediment controls, prior to proceeding with any other earth disturbance or grading. Other building or grading inspection approvals may not be authorized until initial approval by the inspection agency is made; and
  - b. Upon final stabilization before the removal of sediment controls.
- (3) Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on the average of once every two (2) weeks.
- (4) Inspectors shall prepare written reports after every inspection. The inspection report shall describe:
  - a. The date and location of the site inspection;
  - b. Whether or not the approved plan has been properly implemented and maintained;

- c. Any practice deficiencies or erosion and sediment control plan deficiencies; and
  - d. If a violation exists, the type of enforcement action taken.
- (5) The City Manager shall notify the on-site personnel or the owner/developer in writing when violations are observed, describing:
- a. The nature of the violation:
  - b. The required correction action; and
  - c. The time period in which to have the violation corrected.

(b) *Right of entry.* It shall be a condition of every grading, excavation or building permit that the City has the right to enter property periodically to inspect for compliance with this article.

(c) *Modifications to erosion and sediment control plans.* When inspection of the site indicates the approved erosion and sediment control plan needs modification, the modification shall be made in compliance with the erosion and sediment control criteria contained in the standards and specifications as follows:

- (1) The permittee shall submit requests for major modifications to approved erosion and sediment control plans, such as the addition or deletion of a sediment basin, to the plan approval agency to be processed appropriately. This processing includes modifications due to plan inadequacies at controlling erosion and sediment as revealed through inspection; and
- (2) The inspector may approve minor modifications to approved erosion and sediment control plans in the field if documented on a field inspection report. The plan approval agency shall, in conjunction with the inspection agency, develop a list of allowable field modifications for use by the inspector.

(d) *Complaints.* The City shall receive complaints and initiate enforcement procedures when violations are confirmed. Any complaint received shall be acted upon routinely within three (3) working days and the complainant shall be notified of any action or proposed action routinely within seven (7) working days of receipt of the complaint.

#### **Sec. 8-11. Enforcement procedures.**

(a) When the City or an inspector determines that a violation of the approved erosion and sediment control plan has occurred, the inspector shall notify the on-site personnel or the permittee in writing of the violation, describe the required corrective action and the time period in which to have the violation corrected.

(b) If the violation persists after the date specified for corrective action in the notice of violation, the City shall stop work on the site. The City shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to correct the violation.

(c) If reasonable efforts to correct the violation are not undertaken by the permittee, the City shall refer the violation for legal action.

(d) The City may deny the issuance of any permits to an applicant when it determines that the applicant is not in compliance with the provisions of a building or grading permit or approved erosion and sediment control plan.

(e) Any step in the enforcement process may be taken at any time, depending upon the severity of the violation.

(f) If a person is working without a permit, the City shall stop work on the site except activity necessary to provide erosion and sediment control.

(g) Enforcement action may be taken against any person without a permit or any permittee, and/or any contractor, subcontractor, employee or agent of said person or permittee.

**Sec. 8-12. Protection of public and adjacent property during excavation.**

No person shall excavate on land sufficiently close to the property line to endanger any adjoining public street, sidewalk, alley or other public property without supporting and protecting such public street, sidewalk, alley or other public property from settling, cracking or other damage which might result from such excavation. If, in the opinion of the City Manager the nature of the excavation is such as to create a hazard to health, life, safety or property unless adequately safeguarded, the applicant shall construct such walls, fences, guard rails or other structures, to safeguard the public street, sidewalk, alley or other public property and persons using such, as the City Manager may require.

**Sec. 8-13. Deposit of soil, rock, liquid, etc., on public or private property prohibited; removal of same from public property; costs of removal constitute lien on property.**

(a) No person shall dump, move, place, grade, excavate, fill or by any action cause or permit any soil, earth, sand, gravel, rock, stone or other material or water or liquid to be deposited upon or to roll, flow or wash upon or over the premises of another in a manner to cause damage to such premises without the express consent of the owner of such premises so affected; nor shall any person dump, move, place, grade, excavate, fill or by any action cause or permit any soil, earth, sand, gravel, rock, stone or other material or water or liquid to be deposited or to roll, flow or wash upon or over any public street, street improvement, road, sewer, storm drain, watercourse, right-of-way, parking lot or other public property in a manner to damage, obstruct or to interfere with the use of such public facility.

(b) If any soil, earth, sand, gravel, rock, stone or other material or water or liquid is caused to be deposited upon or to roll, flow or wash upon any public property or right-of-way in violation of subsection (a) of this section, the person responsible shall be notified and shall cause the same to be removed from such public property or way within thirty-six (36) hours. In the event of an immediate danger to the public health or safety, notice shall be given by the most expeditious means, and the material or liquid shall be removed immediately. In the event it is not so

removed, the City shall cause such removal, and the cost of such removal by the City shall be paid to the City by the person who failed to so remove the material and shall be a debt due the City. The cost of such removal shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such cost is due and payable. The cost of such removal shall be listed on the tax bill and shall be collected in the manner of such taxes.

**Sec. 8-14. Reserved.**

**Sec. 8-15. Penalties.**

(a) Violations of this article are declared to be municipal infractions and enforceable pursuant to the provisions of section 1-9. The maximum penalty for each initial and repeat violation shall be established by the City Council.

(b) In addition thereto, the City may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.

(c) Liability for and recovery of damages:

(1) In addition to any other sanction under this article, a person who fails to install or to maintain erosion and sediment controls in accordance with an approved plan shall be liable to the City or the state in a civil action, for damages in an amount equal to double the cost of installing or maintaining the controls.

(2) Any governing authority that recovers damages in accordance with this subsection shall deposit them in a special fund, to be used solely for:

a. Correcting to the extent possible the failure to implement or maintain erosion and sediment controls; and

b. Administration of the sediment control program.

(d) Any action instituted under subsections (b) and (c)(1) of this section shall include the recovery of all costs incident to said enforcement action, including attorneys, consultant and witness fees, discovery and administration costs. A court of competent jurisdiction shall have authority to award such fees and costs in any enforcement proceedings.

**Sec. 8-16. Exemptions for city, county or state agencies.**

The provisions of sections 8-8 and 8-9 and the municipal infractions provisions of section 8-15 shall not apply to City, county or state agencies within the state, or any combination thereof.

**ARTICLE III. ~~[STORM WATER]~~ STORMWATER MANAGEMENT****Sec. 8-17. Purpose and authority.**

The purpose of this article is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated within increased ~~[storm water]~~ stormwater runoff. Proper management of ~~[storm water]~~ stormwater runoff will minimize damage to public and private property, reduce the effects of development on land and stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding, and maintain after development, as nearly as possible, the predevelopment runoff characteristics.

The provisions of this article, pursuant to the Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland, 1996 replacement volume, are adopted under the authority of the Gaithersburg City Code and shall apply to all development occurring within the Gaithersburg city limits. The application of this article and provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation on the City's power to impose more strict requirements for environmental preservation purposes or repeal or limitation of any other powers granted by State statute. The Planning and Code Administration of the City shall be responsible for the coordination and enforcement of the provisions of this article.

**Sec. 8-18. Incorporation by reference ~~[Definitions]~~**

For the purpose of this Ordinance, the following documents unless otherwise specified are incorporated by reference in the administration of this Article:

(a) The 2000 Maryland Stormwater Design Manual, Volumes I & II (Maryland Department of the Environment, April 2000) is incorporated by reference by the City of Gaithersburg and shall serve as the official guide for stormwater principles, methods, and practices.

(b) USDA Natural Resources Conservation Service Maryland Conservation Practice Standard Pond Code 378 (January 2000).

**~~[Sec. 8-19. Definitions. [Scope]]~~**

~~For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:~~

~~Administration. Administration means the Maryland Department of the Environment (MDE) Water Management Administration (WMA).~~

~~Adverse impact. Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which unreasonably interfere with~~

~~the enjoyment of life or property, including outdoor recreation.~~

~~*Agricultural land management practices.* Those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.~~

~~*Applicant.* Any person, firm or governmental agency who executes the necessary forms to procure official approval of a project or a permit to carry out construction of a project.~~

~~*Aquifer.* A porous water-bearing geologic formation generally restricted to materials capable of yielding an appreciable supply of water.~~

~~*Architect.* An architect duly registered by the state to practice professional architecture, including landscape architecture, in accordance with the provisions of article 56 of the Annotated Code of Maryland, 1957, (1979 Replacement Volume), as amended.~~

~~*Best Management Practice (BMP).* A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.~~

~~*Channel Protection Storage Volume (Cpv).* The volume used to design structural management practices to control stream channel erosion. Methods for calculating the channel protection storage volume are specified in the 2000 Maryland Stormwater Design Manual, Volumes I & II.~~

~~*City.* The City of Gaithersburg, Maryland.~~

~~*City Manager.* The City Manager or his designee.~~

~~*Clearing.* The removal of trees and brush from the land, but shall not include the ordinary mowing of grass.~~

~~*County.* Montgomery County, Maryland.~~

~~*Design Manual.* The 2000 Maryland Stormwater Design Manual, Volumes I & II that serves as the official guide for stormwater management principles, methods, and practices.~~

~~*Detention structure.* A permanent structure for the temporary storage of runoff which is designed so as not to create a permanent pool of water.~~

~~*Develop land.* To change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial or institutional construction or alteration.~~

~~*Development.* A project consisting of buildings, structures and other improvements, or components thereof, upon any lot, tract or parcel which is either subdivided or unsubdivided.~~

~~*District.* The Montgomery Soil Conservation District.~~



~~*Drainage area.* That area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.~~

~~*Easement.* A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.~~

~~*Exemption.* Those land development activities that are not subject to the [storm water] stormwater management requirements contained in this article.~~

~~*Extended detention.* A stormwater design feature that provides gradual release of a volume of water in order to increase settling of pollutants and protect downstream channels from frequent storm events. Methods for designing extended detention BMPs are specified in the Design Manual.~~

~~*Extreme flood volume ( $Q_f$ ).* The storage volume required to control those infrequent but large storm events in which overbank flows reach or exceed the boundaries of the 100-year floodplain.~~

~~*Flow attenuation.* Prolonging the flow time of runoff to reduce the peak discharge.~~

~~*Grading.* Any act by which soil is cleared, stripped, stockpiled, excavated, filled or any combination thereof.~~

~~*Infiltration.* The passage or movement of water into the soil surface.~~

~~*Land disturbing activity.* Any earth movement or land use changes which may result in soil erosion or the movement of sediments into waters or onto other lands, including, but not limited to, tilling, clearing, grading, excavating, stripping, filling and related activities. Land disturbing activity also includes the covering of land surfaces with any structure or impermeable material, regardless of whether the land surface itself remains permeable or impermeable. Provided that the resurfacing of an existing paved area shall not constitute a new land disturbing activity.~~

~~*Off-site storm water management.* The design and construction of a facility necessary to control storm water from more than one development.~~

~~*On-site storm water management.* The design and construction of systems necessary to control storm water within an immediate development.~~

~~*Overbank flood protection volume ( $Q_p$ ).* The volume controlled by structural practices to prevent an increase in the frequency of out of bank flooding generated by development. Methods for calculating the overbank flood protection volume are specified in the Design Manual.~~

~~*Person.* Any people, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency within the state, or any combination thereof.~~

~~*[Porous paving.* An open graded asphaltic or reticular concrete or other material which allows~~

~~water to pass through it.]~~

~~*Predevelopment state.* *Pristine or meadow in good hydrologic condition.*~~

~~*Recharge volume (Re<sub>v</sub>).* That portion of the water quality volume used to maintain groundwater recharge rates at development sites. Methods for calculating the recharge volume are specified in the Design Manual.~~

~~*Redevelopment.* Any construction, alteration, or improvement exceeding 5000 square feet of land disturbance performed on sites where existing land use is commercial, industrial, institutional or multifamily residential.~~

~~*Retention structure.* A permanent structure that provides for the storage of runoff by means of a permanent pool of water.~~

~~*Retrofitting.* The construction of a structural BMP in a previously developed area, the modification of an existing structural BMP, or the implementation of a nonstructural practice to improve water quality over current conditions.~~

~~*Sediment.* Soils or other surficial materials transported or deposited by the action of wind, water, ice or gravity as a product of erosion.~~

~~*Site.* Any tract, lot or parcel of land or combination of tracts, lots or parcels of land which are in one ownership, or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision or project.~~

~~*Stabilization.* The prevention of soil movement by any of various vegetative and/or structural means.~~

~~*[Storm Water] Stormwater management means:*~~

- ~~(a) For quantitative control, a system of [land management,] vegetative and structural measures that control the increased volume and rate of surface runoff caused by manmade changes to the land; and~~
- ~~(b) For qualitative control, a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.~~

~~*[Storm Water] Stormwater management plan.* A set of drawings or other documents submitted by a person as a prerequisite to obtaining a [storm water] stormwater management approval, which contain all of the information and specifications pertaining to [storm water] stormwater management.~~

~~*Stripping.* Any activity which removes the vegetative surface cover including tree removal, clearing, grubbing and storage or removal of topsoil.~~

~~*Variance.* The modification of the minimum [storm water] stormwater management requirements for specific circumstances such that strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of the article.~~

~~Waiver. The relinquishment from [storm water] stormwater management requirements by the City of Gaithersburg for a specific development on a case by case review basis.~~

~~(c) Qualitative stormwater management waiver includes water quality volume and recharge volume design parameters.~~

~~(d) Quantitative stormwater management waiver includes channel protection storage volume, overbank flood protection volume, and extreme flood volume design parameter.~~

~~Watercourse. Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash, in which water flows in a definite direction or course, either continuously or intermittently, and including any adjacent area that is subject to inundation from overflow or flood water.~~

~~Watershed. The total drainage area contributing runoff to a single point.~~

~~Water quality volume (WQ<sub>v</sub>). The volume needed to capture and treat 90 percent of the average annual runoff volume at a development site. Methods for calculating the water quality volume are specified in the Design Manual.~~

~~Wetlands. An area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.~~

#### **Sec. 8-19[20]. Scope. [Exemptions]**

(a) No person shall develop any land for residential, commercial, industrial or institutional uses without having provided for appropriate approved [storm water] stormwater management measures that control or manage runoff from such developments, except as provided within this section. Stormwater management shall be provided when a site is developed or redeveloped.

(b) The stormwater management measures must be designed consistent with the Design Manual and constructed according to an approved plan for new development or the policies stated in section 8-22[21] for redevelopment.

(c) Stormwater management shall be provided in accordance with the above even if the development or redevelopment results in less impervious area than previously existed.

#### **Sec. 8-20[21]. Exemptions. [Waivers]**

(a) The following development activities are exempt from the provisions of this article and the requirements of providing [storm water] stormwater management:

- (1) ~~(a)~~ Agricultural land management activities;
- (2) ~~(b)~~ Additions or modifications to existing single-family detached residential structures if they comply with (3) of this section;

- (3) ~~(e)~~ Developments that do not disturb over five thousand (5,000) square feet of land area;
- (4) ~~(d)~~ Land development activities which the [Water Resources] Administration determines will be regulated under specific state laws, which provide for managing ~~[storm water]~~ stormwater runoff;

~~[(e) Residential developments consisting of single family houses each on a lot of two (2) acres or greater.]~~

**(b) Nothing in this section shall prohibit City Manager or the Director of Public Works from requiring stormwater management controls upon the evaluation of the cumulative effects of previous exemptions.**

#### **Sec. 8-21~~[22]~~. Waivers. [Variances]**

~~[(a) The district may grant a waiver of the storm water management requirements for individual developments provided that a written request is submitted by the applicant containing descriptions, drawings and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions or modifications to a development receiving a waiver. Eligibility for a waiver shall be determined if the applicant can conclusively demonstrate that:~~

- ~~(1) The proposed development will not generate more than a ten (10) percent increase in the two year predevelopment peak discharge rate and will not cause an adverse impact on the receiving wetland, watercourse or waterbody; or~~
- ~~(2) A site is completely surrounded by existing developed areas which are served by an existing network of public storm drainage systems of adequate capacity to accommodate the runoff from the additional development; or~~
- ~~(3) Provisions to control direct outfall to tidewater are provided when the first inch of rainfall is managed according to infiltration standards and specifications promulgated by the water resources administration.]~~

The City may grant waivers to the strict compliance of this Chapter based upon the following considerations:

(a) Stormwater management quantitative control waivers shall be granted by the City Manager or his designee only to those projects within areas where watershed management plans have been developed consistent with (f) of this section.

(b) If watershed management plans consistent with (f) of this section have not been developed, then stormwater management quantitative control waivers may be granted to projects:

~~[(1) That do not increase the post-development peak discharge for the 2-year storm event by~~

~~more than 10 percent of the CALCULATED pre-developed peak RUNOFF RATE discharge in those areas of the State where the 2-year storm serves as the overbank flood protection volume according to the Design Manual; or]~~

- (1) When the ~~approving agency]~~ City Engineer determines that unusual site situations exist that prevent the reasonable implementation of quantity control BMPs.

(c) Stormwater management qualitative control waivers apply only to:

- (1) In-fill development projects where stormwater management implementation is not feasible;
- (2) Redevelopment projects if the requirements of section 8-22~~[23]~~ of this ordinance are satisfied; or
- (3) Sites where the ~~approving agency]~~ City determines that circumstances exist that prevent the reasonable implementation of quality control practices.

(d) Waivers granted must:

- (1) Be on a case-by-case basis;
- (2) Consider the cumulative effects of the City of Gaithersburg's waiver policy; and
- (3) Reasonably ensure the development will not adversely impact stream quality.

(e) If City of Gaithersburg has established an overall watershed management plan for a specific watershed, then the City of Gaithersburg may develop quantitative waiver and redevelopment provisions that differ from sections 8-21~~[21]~~(b) and 8-22~~[21]~~.

(f) A watershed management plan developed for the purpose of implementing different stormwater management policies for waivers and redevelopment shall:

- (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
- (2) Evaluate both quantity and quality management;
- (3) Include cumulative impact assessment of watershed development;
- (4) Identify existing flooding and receiving stream channel conditions;
- (5) Be conducted at a reasonable scale;
- (6) Specify where on-site or off-site quantitative and qualitative stormwater management practices are to be implemented; and
- (7) Be consistent with the General Performance Standards for Stormwater Management in Maryland found in Section 1.2 of the Design Manual

(8) Be approved by the Administration.

(g) The City of Gaithersburg may grant a waiver of quantitative stormwater management requirements for individual developments in areas where watershed management plans have been developed provided that a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions, or modifications to a development receiving a waiver.

(h**[b]**) When an applicant obtains a waiver of the required on-site ~~[storm-water]~~ stormwater management from the ~~[district]~~ City, the applicant's contribution can take one of the following forms, the choice of which shall be in the discretion of the City Manager:

- (1) *Monetary contribution.* The monetary contribution shall be based on the fee schedule as established by the Mayor and City Council. The fee schedule shall be based on the ~~[cubic feet of storage]~~ square feet of imperviousness required for on-site management of the development in question and may be revised from time to time by resolution of the ~~[m]Mayor and [e]City [e]Council.~~

The monetary contribution shall not exceed the total cost of the ~~[otherwise required]~~ on-site ~~[storm-water]~~ stormwater management ~~[facility and improvements related thereto].~~

Where the applicant can provide evidence, acceptable to the Director of Public Works that on-site stormwater management can be provided at a lower cost (including the cost of the land and a maintenance escrow fund equaling the cost of construction) than the required contribution, the Director of Public Works shall adjust the contribution to be no greater than the applicant's estimated cost of providing on-site stormwater management. None of the foregoing, however, prevents the Mayor and City Council from accepting a voluntary contribution that exceeds the cost of an on-site facility. Moreover, nothing shall require the Mayor and City Council to accept a contribution in lieu of an on-site facility if it would not be in the best interests of the City.

Monetary contributions may be used by the City for land acquisition, including easements and rights-of-way, and the design, purchase, construction, expansion, repair, maintenance and inspection of public ~~[storm-water]~~ stormwater management facilities, either existing or contained in an approved capital improvements program of the City or county. Any such contribution shall be credited by the City to the appropriate ~~[storm water]~~ stormwater management capital improvement project.

- (2) *Dedication and conveyance of land.* Instead of making a monetary contribution, the applicant, upon receiving a waiver from the District, may enter into an agreement with the City for the granting of an easement or the conveyance or dedication of land by the applicant to be used for the construction of an off-site ~~[storm-water]~~ stormwater management facility. The agreement shall be entered into prior to the issuance of the building permit.

- (3) The applicant's contribution provided in (b)(1) and (2) above shall occur prior to the issuance of any clearing, grading, excavation or building permit.

**Sec. 8-22[23]. Redevelopment. [~~Storm Water Management Plans~~]**

(a) If the land disturbing redevelopment activity involves less than one-third (1/3) of the site, stormwater management shall be provided for the impervious area resulting from the land disturbing activity.

(b) If the land disturbing redevelopment activity involves two-thirds (2/3) or more of the site, stormwater management shall be provided for the entire impervious area on the site, including impervious area previously existing and left untouched by the development or redevelopment. For purposes of this requirement, construction of new structures over existing structures or existing impervious areas shall be included in the computation of the percentage of site involvement. This computation shall not include resurfacing of existing impervious area unless such resurfacing involves the removing or replacing of an existing impervious area.

(c) If the land disturbing redevelopment activity involves more than one-third (1/3) and less than two-thirds (2/3) of the site area, stormwater management may be required for the total imperviousness of the site as determined by the City of Gaithersburg's Department of Public Works.

(d) Stormwater management plans for redevelopment shall be consistent with the Design Manual, except for the recharge, channel protection storage volume, and overbank flood protection volume requirements, which may be waived if the City of Gaithersburg's Department of Public Works determines it is infeasible to meet these requirements.

(e) Where conditions prevent on-site stormwater management, practical alternatives may be considered, including but not limited to:

- (1) Fees;
- (2) Off-site BMP implementation for a drainage area comparable in size and percent imperviousness to that of the project;
- (3) Watershed or stream restoration;
- (4) Retrofitting; or
- (5) Other practices approved by the City of Gaithersburg.

**Sec. 8-23[24]. Variances. [~~Permits~~]**

The City of Gaithersburg [~~district~~] may grant a written variance from any requirement of section 8-24[25], (~~[Storm Water]~~ Stormwater Management Criteria), of this article if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of this article will result in unnecessary hardship and not fulfill the intent of the article. A written request for variance shall be provided to the City of Gaithersburg [~~district~~] and shall state the

specific variances sought and reasons for their granting. The City of Gaithersburg [district] shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the person developing land.

**Sec. 8-24[25]. ~~[Storm Water]~~ Stormwater management criteria.**

(a) *Minimum control requirements.*

~~[(1) The minimum storm water control requirements shall require that all developments provide management measures necessary to maintain the post development peak discharges for a twenty four hour, two and ten year frequency storm event at a level that is equal to or less than the respective, twenty four hour; two and ten year predevelopment peak discharge rates, through storm water management practices that control the volume, timing and rate of flows. Where runoff is discharged into an offsite storm water management facility, the control requirements and procedures shall be in accordance with criteria for off site structures (section 8-25(c)(3)).]~~

~~[(2) Storm water management and development plans where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the water resources administration in accordance with the Flood Hazard Management Act of 1976 (Subsection 8-9A-01 et seq., Natural Resources Article).]~~

(1) The minimum control requirements established in this section and the Design Manual are as follows:

a. The City of Gaithersburg requires that the recharge volume, water quality volume, and channel protection storage volume sizing criteria be used to design BMP's according to the Design Manual. Control of the 10-year frequency storm event may be required by the City according to the Design Manual if the City determines that historical flooding problems exist and downstream floodplain development and conveyance system design cannot be controlled.

b. The City may require more than the minimum control requirements specified in this chapter if hydrologic or topographic conditions warrant or if flooding, stream channel erosion, or water quality problems exist downstream from a proposed project.

(2) Stormwater management and development plans where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the [Maryland] Department [of the Environment] in accordance with the Flood Hazard Management Act of 1976.

(b) ~~[Storm Water]~~ Stormwater management measures.

~~[(1) Storm water management measures shall be required to satisfy the minimum control requirements. The storm water management practices to be utilized in developing a storm water management plan shall be according to the following order of preference:~~

~~a. Infiltration of runoff on site;~~



- ~~b. Flow attenuation by use of open vegetated swales and natural depressions;~~
- ~~c. Storm water retention structures; and~~
- ~~d. Storm water detention structure.]~~

~~[(2) Infiltration practices shall be utilized to reduce volume increases to the extent possible as determined in accordance with infiltration standards and specifications established by the water resources administration. A combination of successive practices may be used to achieve the applicable minimum control requirements. Justification shall be provided by the person developing land for rejecting each practice based on site conditions.]~~

The structural and nonstructural stormwater management measures established in this Chapter shall be used, either alone or in a combination, in developing a stormwater management plan.

(1) Structural Stormwater Management Measures.

- a. The following structural stormwater management practices shall be designed according to the Design Manual to satisfy the applicable minimum control requirements established in Section ~~[8-25]~~(a) of this section.
  - 1. Stormwater management ponds;
  - 2. Stormwater management wetlands;
  - 3. Stormwater management infiltration;
  - 4. Stormwater management filtering systems; and
  - 5. Stormwater management open channel systems.
- b. The performance criteria specified in the Design Manual with regard to general feasibility, conveyance, pretreatment, treatment and geometry, environment and landscaping, and maintenance shall be considered when selecting structural stormwater management practices.
- c. Structural stormwater management practices shall be selected to accommodate the unique hydrologic or geologic regions of the State.

(2) Nonstructural Stormwater Management Measures.

- a. The following nonstructural stormwater management practices shall be applied according to the Design Manual to minimize increases in new development runoff:
  - 1. Natural area conservation;
  - 2. Disconnection of rooftop runoff;

3. Disconnection of non-rooftop runoff;
  4. Sheet flow to buffers;
  5. Grass channels; and
  6. Environmentally sensitive development.
- b. The use of nonstructural stormwater management practices shall be encouraged to minimize the reliance on structural BMP's.
  - c. The minimum control requirements listed in ~~8-251~~(a) of this article may be reduced when nonstructural stormwater management practices are incorporated into site designs according to the Design Manual.
  - d. The use of nonstructural stormwater management practices may not conflict with existing State or local laws, ordinances, regulations, or policies.
  - e. Nonstructural stormwater management practices used to reduce the minimum control requirements must be recorded in the land records of Montgomery County and remain unaltered by subsequent property owners. Prior approval from the City of Gaithersburg shall be obtained before nonstructural stormwater practices are altered.
- (3) Alternative structural and nonstructural stormwater management practices may be used for new development water quality control if they meet the performance criteria established in the Design Manual and are approved by the Administration. The City of Gaithersburg shall approve practices used for redevelopment projects.
- (4) For the purposes of modifying the minimum control requirements or design criteria, the owner/developer shall submit to the City of Gaithersburg an analysis of the impacts of stormwater flows downstream in the watershed. The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, or natural point of restricted streamflow. The point of investigation is to be established with the concurrence of the City of Gaithersburg, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the project or stormwater management facility.

(c) Specific design criteria.

The basic design criteria, methodologies, and construction specifications, subject to the approval of the City of Gaithersburg and the Maryland Department of the Environment, Water Management Administration, shall be those of the Design Manual.

- ~~[(1) Infiltration systems shall be designed in accordance with standards and specifications that are developed or approved by the water resources administration and shall meet the~~

following requirements:

- ~~a. Infiltration systems greater than three (3) feet deep shall be located at least ten (10) feet from basement wall~~
- ~~b. Infiltration systems designed to handle runoff from commercial or industrial impervious parking areas shall be a minimum of one hundred (100) feet from any water supply well;~~
- ~~c. Infiltration systems may not receive runoff until the entire contributory drainage area to the infiltration system has received final stabilization; and~~
- ~~d. The storm water management facility design shall provide an overflow system with measures to provide a nonerosive velocity of flow along its length and at the outfall.]~~

~~[(2) Retention and detention ponds shall be designed and constructed in accordance with the criteria of the soil conservation service and shall include the following items:~~

- ~~a. Velocity dissipation devices shall be placed at the outfall of all detention or retention structures and along the length of any outfall channel as necessary to provide a nonerosive velocity of flow from the structure to a watercourse.~~
- ~~b. The developer shall submit to the district an analysis of the impacts of storm water flows downstream in the watershed. The analysis shall include hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure or natural point of restricted streamflow, established with the concurrence of the district, downstream of a tributary of the following size:~~
  - ~~1. The first downstream tributary whose drainage area equals or exceeds the contributing area to the pond; or~~
  - ~~2. The first downstream tributary whose peak discharge exceeds the largest designed release rate of the pond.~~
- ~~c. The designed release rate of the structure shall be modified if any increase in flooding or stream channel erosion would result at the downstream dam, highway, structure or natural point of restricted streamflow. The release rate of the structure shall:~~
  - ~~1. Be reduced to a level that will prevent any increase in flooding or stream channel erosion at the downstream control point;~~
  - ~~2. Be not less than one year predevelopment peak discharge rate; and~~
  - ~~3. Meet the minimum control requirements established herein.~~
- ~~d. Small pond approval shall be obtained from the soil conservation district or the water resources administration pursuant to Natural Resources Article subdivision 8-803(b).]~~

~~[(3) Off site structures to be considered:~~

- ~~a. Shall have a contributory drainage area not in excess of four hundred (400) acres unless, on a case by case basis, a larger drainage area is approved by the water resources administration;~~
- ~~b. Shall provide for a permanent pool of water or provide for twenty four hour detention period for the one year frequency storm peak discharge;~~
- ~~c. Shall manage the increase in peak discharge(s) for the two (and ten) year frequency storm event(s); and~~
- ~~d. May not be located so as to discharge to Class III Natural Trout Waters identified in COMAR 10.50.01.02I, unless authorized by the water resources administration in permits issued pursuant to Natural Resources Article subsection 8-803.]~~

~~[(4) The predevelopment peak discharge rate shall be computed assuming that all land uses in the site to be developed are in good hydrologic condition.]~~

~~[(5) The developer shall give consideration to incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist prior to development to the degree that they can accommodate the additional flow of water.]~~

~~[(6) The district shall give preference to the use of swales in place of the traditional use of curbs and gutters based on a case by case review of storm water management plans.]~~

~~[(7) Where a storm water management plan involves direction of some or all runoff off of the site, it shall be the responsibility of the developer to obtain from adjacent property owners any easements or other necessary property interests concerning flowage of water. Approval of a storm water management plan does not occur or [sic] affect any such rights.]~~

~~[(8) The basic design criteria, methodologies and construction specifications, subject to the approval of the district and the water resources administration, shall be those of the soil conservation service, generally found in the most current edition of the following publications or subsequent revisions:~~

- ~~a. "Urban Hydrology for Small Watersheds," Technical Release No. 55, January, 1975.~~
- ~~b. "Storm Water Management Pond Design Manual," Maryland Association of Soil Conservation Districts, June, 1975.~~
- ~~c. "Soil Conservation Service Engineering Field Manual," latest edition, as applicable.~~
- ~~d. "Soil Conservation Service Standard and Specification for Ponds," Specification No.~~

378, July 1981.]

(d) Other considerations in design preparation.

- (1) Computations for stormwater management storage shall include one-half of contiguous right-of-way up to 30 feet maximum of existing and planned~~[ning]~~ non-state roads, and of ~~[s]~~State owned rights-of-ways where no stormwater management facility is or will be provided.
- (2) The predevelopment peak discharge rate shall be computed assuming that all land uses in the tributary area are meadow in good hydrologic condition or more pervious existing conditions.

**Sec. 8-25[26]. ~~[Storm Water]~~ Stormwater management plans. ~~[Performance bond]~~**

(a) *Review and approval of ~~[storm water]~~ stormwater management plans.*

- (1) A ~~[storm water]~~ stormwater management plan or an application for a waiver shall be submitted to the City of Gaithersburg , or the District for ponds,~~[district]~~ by the developer for review and approval for any proposed development, unless otherwise exempted. The ~~[storm water]~~ stormwater management plan shall contain supporting computations, drawings and sufficient information describing the manner, location and type of measures in which ~~[storm water]~~ stormwater runoff will be managed from the entire development. The City of Gaithersburg ,~~[district]~~ or the District for ponds, shall review the plan to determine compliance with the requirements of this chapter ~~[article]~~ prior to approval. The plan shall serve as the basis for all subsequent construction, and any construction contrary to the plan is prohibited. If a stormwater management plan involves direction of some or all runoff off of the site, it is the responsibility of the developer to obtain from adjacent property owners any easements or necessary property interests concerning flowage of water. Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.
- (2) Notification of approval or reasons for the disapproval or modification shall be given to the applicant within forty-five (45) ~~[thirty (30)]~~ days after submission of the completed ~~[storm water]~~ stormwater plan. If a decision is not made within forty-five (45) ~~[thirty (30)]~~ days, the applicant shall be informed of the status of the review process and the anticipated completion date. The ~~[storm water]~~ stormwater management plan shall not be considered approved without the inclusion of the signature and date of signature of the City of Gaithersburg ~~[district]~~ on the plan.

(b) *Contents of the ~~[storm water]~~ stormwater management plan.* The developer is responsible for submitting a ~~[storm water]~~ stormwater management plan, which meets the design requirements provided by this chapter ~~[article]~~. The plan shall be accompanied by a report that includes sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing ~~[storm water]~~ stormwater runoff. The developer or builder shall certify on the drawings that all clearing, grading, drainage,

construction and development shall be conducted in strict accordance with the plan. The minimum information submitted for support of a ~~[storm-water]~~ stormwater management plan or application for a waiver shall be as follows:

~~{(1) Site characteristics:~~

- ~~a. Topography survey showing existing and proposed contours, including area necessary to determine downstream analysis for proposed storm water management facility.~~
- ~~b. Soils investigation including borings for construction of small ponds and infiltration practices.~~
- ~~c. Description of all watercourses, impoundments and wetlands on or adjacent to the site or into which storm water flows.~~
- ~~d. Delineation of one hundred year floodplains, if applicable.~~
- ~~e. Structure classification (SCS Pond Standard 378).}~~

~~{(2) Computations:~~

- ~~a. Hydrology;~~
- ~~b. Hydraulic; and~~
- ~~c. Structural.~~

In addition to the information listed above, ~~storm water management design plans shall include:~~

~~(a) storm water management plans:~~

- ~~(1) Vicinity map.~~
- ~~(2) Drainage area map showing the watershed, the watershed boundaries, drainage area and storm water flow paths.~~
- ~~(3) Proposed improvements including location of buildings or other structures, impervious surfaces and storm drainage facilities, if applicable.~~
- ~~(4) Location of utilities.~~
- ~~(5) Structural details for all components of the proposed drainage systems and storm water management facilities.~~
- ~~(6) Timing schedules and sequence of development clearing, including stripping, rough grading, construction, final grading and vegetative stabilization.~~
- ~~(7) Maintenance schedule.~~
- ~~(8) Notes on drawings specifying materials to be used.~~
- ~~(9) Construction specifications.~~
- ~~(10) Location of easements.~~

~~(b) Estimate of storm water management construction cost.~~

~~(c) Other information as required.]~~

(1) The minimum information submitted for support of a stormwater management plan or application for a waiver shall be as follows:

- a. A brief narrative description of the project;
- b. Geotechnical investigations including soil maps, borings, site specific recommendations, and any additional information necessary for the proposed stormwater management design;
- c. Descriptions of all water courses, impoundments, and wetlands on or adjacent to the site or into which stormwater directly flows;
- d. Hydrologic computations, including drainage area maps depicting pre development and post development runoff flow path segmentation and land use;
- e. Hydraulic computations;
- f. Structural computations;
- g. Unified sizing criteria volume computations according to the Design Manual; and
- h. Any other information required by the City of Gaithersburg.

(2) Construction drawings submitted for stormwater management plan approval shall include the following:

- a. A vicinity map;
- b. Topography survey showing existing and proposed contours, including the area necessary to determine downstream analysis for proposed stormwater management facilities;
- c. Any proposed improvements including location of buildings or other structures, impervious surfaces, storm drainage facilities, and all grading;
- d. The location of existing and proposed structures and utilities;
- e. Any easements and rights-of-way;
- f. The delineation, if applicable, of the floodplain for any watercourse with a drainage area of 30 acres or greater, any on-site wetlands, and stream buffers;
- g. Structural and construction details for all components of the proposed drainage system or systems, and stormwater management facilities.
- h. All necessary construction specifications;

- i. A sequence of construction;
- j. Data for total site area, disturbed area, new impervious area, and total impervious area;
- k. A table showing the unified sizing criteria volumes required in the Design Manual;
- l. A table of materials to be used for stormwater management facility planting;
- m. All soil boring logs and locations;
- n. A maintenance schedule;
- o. Certification by the owner/developer that all stormwater management construction will be done according to this plan;
- p. An as-built certification signature block to be executed after project completion;
- q. A scanned or digital version of the final plan;
- r. Any other information required by the City of Gaithersburg.

(c) Preparation of the Stormwater Management Plan

- (1) The design of stormwater management plans shall be prepared by any individual whose qualifications are acceptable to the City. The City may require that the design be prepared by either a professional engineer, professional land surveyor, or landscape architect licensed in the State, as necessary to protect the public or the environment.
- (2) If a stormwater BMP requires either a dam safety permit from MDE or small pond approval from the District ~~Montgomery Soil Conservation District (SCD)~~, the City shall require that the design be prepared by a professional engineer licensed in the State.

**Sec. 8-~~26~~<sup>27</sup>. Permits ~~Liability insurance~~.**

(a) *Required.* No person shall develop any land without first obtaining a permit from the City and without providing for appropriate ~~storm-water~~ stormwater management measures, except as provided by this article, and any standards, rules and regulations promulgated hereunder.

(b) *Application.*

- (1) To obtain a permit required by this article, an applicant shall first file an application therefor in writing upon forms furnished by the City. The application shall be signed by the owner of the property, or an authorized agent, where the work is to be performed. If the owner is a corporation, it shall be signed by the President or Vice-President, attested by the secretary or assistant secretary and the corporate seal affixed. The application shall be accompanied by scale plans or drawings, including a grading, erosion and sediment



control and ~~[storm-water]~~ stormwater management plan, the permit fee and a bond or other security as required in section 8-27[6]. The plans accompanying the application shall be prepared and certified by a professional engineer, professional land surveyor, landscape architect, ~~[architect]~~ or other person qualified in the State of Maryland and approved by the City Manager.

- (2) Prior to the issuance of a permit pursuant to this article, a copy of the application and plan shall be referred to the Maryland Department of the Environment or District for review and approval if a stormwater best management practice requires either a dam safety permit of small pond approval for the proposed ~~[storm-water]~~ stormwater management measures ~~[and the district shall notify the city of their recommendations or approval, or both, so that the applicant may be notified in a timely manner].~~
- (3) A grading or building permit may not be issued for any parcel or lot unless a ~~[storm water]~~ stormwater management plan has been approved or waived by the City of Gaithersburg [district] as meeting all the requirements of this article. Where appropriate, a building permit may not be issued without:
  - a. Recorded easements for the ~~[storm-water]~~ stormwater management facility and easements to provide adequate access for inspection and maintenance from a public right-of-way;
  - b. A recorded ~~[storm-water]~~ stormwater management maintenance agreement;
  - c. Performance bond
  - d. Permission from adjacent property owners as necessary; and
  - e. A scanned or digital version of the final plan.

(c) *Expiration and renewal.* Every permit issued under this article shall expire at the end of the period of time set out in the permit. The permittee shall fully perform and complete all of the work required to be done within the time specified in the permit. If the permittee shall be unable to complete the work within the specified time, he shall, within thirty (30) days prior to expiration of the permit, present in writing to the City Manager a request for an extension of time, setting forth therein the reasons for the required extension. If, in the discretion of the City Manager, such an extension is warranted, he may grant additional time for the completion of the work for an additional fee of ten (10) percent of the original fee. Where the City Manager determines the extension of time will require a substantial modification of the ~~[storm-water]~~ stormwater management plan, any extension of a permit shall be subject to approval of a revised ~~[storm-water]~~ stormwater management plan by the ~~[District]~~ permitting authority.

(d) *Permit fee.* A nonrefundable permit fee will be collected at the time the ~~[storm-water]~~ stormwater management plan or application for waiver is submitted. The permit fee will provide for the cost of plan review, administration and management of the permitting process, and inspection of all projects subject to this article. A permit fee schedule shall be established by resolution of the Mayor and City Council.

(e) *Suspension and revocation.* Any grading or building permit issued by the City may be suspended or revoked after written notice is given to the permittee for any of the following reasons:

- (1) Any violation(s) of the conditions of the ~~[storm-water]~~ stormwater management plan approval.
- (2) Changes in site runoff characteristics upon which a waiver was granted
- (3) Construction is not in accordance with the approved plans.
- (4) Noncompliance with correction notice(s) or stop work order(s) issued for the construction of the ~~[storm-water]~~ stormwater management facility.
- (5) An immediate danger exists in a downstream area in the opinion of the District.
- (6) Any material misrepresentation in the application for permit or the undertaking of work pursuant to the permit.

(f) *Conditions.* In granting any permit pursuant to this article, the City Manager may attach such conditions thereto as may be reasonably necessary to prevent danger to persons or to public or private property or any sewer, storm drain or watercourse, or to prevent the operation from being conducted in a manner likely to create a nuisance. Such conditions may include, but are not limited to, the erection or installation of walls, fences, drains, dams and structures, plantings and vegetation, erosion and sediment control and ~~[storm-water]~~ stormwater management measures or devices, furnishing necessary easements and a specified method of performing work. No permit shall be issued and no clearing, grading or excavation undertaken except for testing purposes until a ~~[storm-water]~~ stormwater management plan is approved by the City of Gaithersburg ~~[district]~~. The ~~[storm-water]~~ stormwater management plan shall be a condition of the permit. No person shall violate any such conditions so imposed.

#### **Sec. 8-27[28]. Performance bond [~~Inspections~~].**

(a) The City shall require from the developer a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the City Manager and approved by the City attorney, prior to the issuance of any building and/or grading permit for construction of a development requiring a ~~[storm-water]~~ stormwater management facility, and safeguards for the adjoining property. The amount of the security shall not be less than the total estimated construction cost of the ~~[storm-water]~~ stormwater management facility. The bond so required in this section shall include provisions relative to forfeiture for failure to complete work specified in the approved ~~[storm-water]~~ stormwater management plan, compliance with all the provisions of this article and other applicable laws and regulations, and any time limitations. The City Manager may grant a waiver of such bond, letter of credit or other security upon application, after receiving recommendations from the ~~[District]~~ Director of Public-Works, where there is minimal impairment of existing surface drainage, minimal erosion hazard and minimal sedimentation hazard upon any adjacent land or watercourse and no hazard to human life or property. A corporate bond shall be maintained and renewed annually and shall be executed by a surety or guaranty company qualified to transact business in the state. A cash bond or letter of

credit shall be deposited with the City reciting that the cash has been deposited in compliance with and subject to the provisions of this article. The bond, letter or credit or other security shall obligate the principal, his executors, administrators, successors and assigns, jointly and severally with the surety, and shall inure to the benefit of the City, its officers and employees and to any person aggrieved by the principal's failure to comply with the conditions thereof. The principal and the surety shall, under the bond, letter of credit or other security, continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses or liabilities which may be incurred or expended by the City to meet the minimum requirements of this article.

(b) When the City shall find that a default has occurred in the performance of any term or condition of the permit or bond, written notice thereof shall be given to the principal and to the surety of the bond. Such notices shall state the work to be done, the estimated cost thereof and the period of time deemed by the City to reasonably necessary for the completion of such work.

(c) If a cash bond, letter of credit or other security has been posted, notice of default as provided by the preceding paragraphs shall be given to the principal, and if compliance is not had within the time specified, the City shall proceed without delay and without further notice or proceedings whatsoever to forfeit and convert and use the cash deposited, or any portion of such deposit, or other security to cause the required work to be done, by contract or otherwise, in the discretion of the City Manager.

(d) In the event of any default in the performance of any term or condition of the permit or the bond, letter of credit or other security, the City, the surety or any person employed or engaged on his behalf shall have the right to go upon the site to complete the required work or make it safe. In the event the City undertakes the work or to make the site safe with the funds from the forfeited cash or corporate bond, such funds shall be used to pay the cost of contracting, including engineering and administration, for restoration of the site to meet the requirements of the permit, bond or this article. If the cost of the work or making it safe exceeds the amount of the cash or corporate bond, letter of credit or other security, the permittee shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the City. The costs and expenses shall be a lien upon all property and all rights to property, real or personal, of any person liable to pay the same from and after the time such costs are due and payable. The costs shall be listed on the tax bill and shall be collected in the manner of ordinary taxes.

(e) No person shall interfere with or obstruct the ingress or egress to or from any such site or premises by an authorized representative or agent of any surety, or of the City, engaged in completing the work required to be performed under the permit or in complying with the terms or conditions thereof.

(f) The bond shall not be fully released without a final inspection of completed work and approval by the City, submission of "as-built" plans and certification of completion by the City that the ~~storm-water~~ stormwater management facility ~~as being in compliance~~ complies with the approved plan and the provisions of this article. A provision may be made for partial release of the amount of the bond *prorata* upon completion and acceptance by the City of Gaithersburg of the various stages of development as specifically delineated, described and scheduled on the required plans and specifications. The developer shall notify the City upon completion of each

stage that is ready for inspection.

(g) Subsequent to the completion of work, the City Manager is authorized to declare as abandoned and forfeited, any cash bond posted pursuant to a requirement of this chapter, and relinquish proceeds thereof to the general treasury of the City, when after giving the depositor or permittee who posted the cash bond thirty (30) days written notice first by registered mail, and if unclaimed by first-class mail, such depositor or permittee fails to request of the City the return of the cash bond. Upon failure to request of the City return of the cash bond, as provided herein, the depositor or permittee, its successors, heirs and assigns relinquish all claim to said cash bond.

**Sec. 8-28~~[29]~~. Liability insurance [~~Maintenance~~].**

If, in the opinion of the City Manager the nature of the work is such that it may create a hazard to human health, life or safety or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other public property, the City Manager may, before issuing a permit under this article, require that the applicant for a permit file a certificate of insurance showing that he is insured against claims for damages for personal injury and property damage in an amount not less than fifty thousand dollars (\$50,000.00), including damage to the City by deposit or washing of material onto City streets or other public improvements, which may arise from or out of the performance of the work, whether such performance is by himself, his subcontractor or any person directly or indirectly employed by him, and the amount of such insurance shall be prescribed by the City Manager in accordance with the nature of the risks involved. Such insurance shall be written by a company licensed to do business in the state and approved by the City. Neither issuance of a permit nor compliance with the provisions hereto or any condition imposed by the City shall relieve any person from any responsibility for damage to persons or property otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

**Sec. 8-29~~[30]~~. Inspections [~~Appeals~~].**

(a) *Inspection schedule and reports.*

- (1) Prior to approval of a ~~[storm-water]~~ stormwater management plan, the developer will submit to the City a proposed inspection and construction control schedule.
- (2) The developer shall notify the City at least 48 hours before commencing any work in conjunction with the ~~[storm-water]~~ stormwater management plan and upon completion of the project when a final inspection will be conducted.
- (3) Inspections shall be conducted by the City, ~~[or]~~ its authorized representative or, if approved by the City, a certified by a professional engineer licensed by the State. Written inspection reports shall be made of the periodic inspections necessary during construction of stormwater management systems to ensure compliance with the approved plans. ~~[shall conduct inspections and file reports for periodic inspections necessary during construction of storm-water management systems to ensure compliance with the approved plans.]~~ As a condition to any approval of said plan, the City has the right of entry on the property to inspect compliance with this article.

(4) Written inspection reports shall include:

- (a) The date and location of the inspection;
- (b) Whether construction was in compliance with the approved stormwater management plan;
- (c) Any variations from the approved construction specifications; and
- (d) Any violations that exist.

(5) The owner/developer and on-site personnel shall be notified in writing when violations are observed. Written notification shall describe the nature of the violation and the required corrective action. The developer will promptly correct any portion of the work that does not comply, after written notice from the City. The notice shall set forth the nature of corrections required and the time within which corrections will be made.

(6) No work shall proceed until the City inspects and approves the work previously completed and furnishes the developer with the results of the inspection reports as soon as possible after completion of each required inspection.

(b) *Inspection requirements during construction.* After commencing initial site operations, regular inspections shall be made, at a minimum, at the following specified stages of construction:

~~[(1) Infiltration systems, at the commencement, during and upon completion of construction.]~~

~~[(2) Porous paving infiltration systems, at the following stages so as to ensure proper placement and allow for infiltration into the subgrade:~~

- ~~a. Upon completion of stripping, stockpiling, the construction of temporary sediment control and drainage facilities;~~
- ~~b. Upon completion of subgrade section;~~
- ~~c. Upon completion of reservoir base course;~~
- ~~d. Upon completion of the top crushed stone course; and~~
- ~~e. Throughout the placement of the asphaltic concrete surface course to ensure proper laying temperatures and compaction.]~~

~~[(3) Flow attenuation devices, such as open vegetated swales upon completion of construction.]~~

~~[(4) Retention and detention structures, at the following stages:~~

- ~~a. Upon completion of excavation to subfoundation and where required, installation of structural supports or reinforcement for structures, including but not limited to:~~
  - ~~1. Core trenches for structural embankments;~~
  - ~~2. Inlet outlet structures and anti seep structures, watertight connectors on pipes;~~
  - ~~and~~

- ~~3. Trenches for enclosed storm drainage facilities.~~
- ~~b. During placement of structural fill, concrete and installation of piping and catch basins~~
- ~~e. During backfill of foundations and trenches;~~
- ~~d. During embankment construction; and~~
- ~~e. Upon completion of final grading and establishment of permanent stabilization.]~~

(1) For Ponds:

- a. Upon completion of excavation to sub-foundation and when required, installation of structural supports or reinforcement for structures, including but not limited to:
    - 1. Core trenches for structural embankments
    - 2. Inlet and outlet structures, anti-seep collars or diaphragms, and watertight connectors on pipes; and
    - 3. Trenches for enclosed storm drainage facilities;
  - b. During placement of structural fill, concrete, and installation of piping and catch basins;
  - c. During backfill of foundations and trenches;
  - d. During embankment construction; and
  - e. Upon completion of final grading and establishment of permanent stabilization.
- (2) Wetlands – at the stages specified for pond construction in 8-29[30](b)(1) of this section, during and after wetland reservoir area planting, and during the second growing season to verify a vegetation survival rate of at least 50 percent.

(3) For infiltration trenches:

- (a) During excavation to subgrade;
- (b) During placement and backfill of underdrain systems and observation wells;
- (c) During placement of geotextiles and all filter media;
- (d) During construction of appurtenant conveyance systems such as diversion structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and

- (e) Upon completion of final grading and establishment of permanent stabilization;
- (4) For infiltration basins – at the stages specified for pond construction in 8-29[30](b)(1) of this section and during placement and backfill of underdrain systems.
- (5) For filtering systems:
  - (a) During excavation to subgrade;
  - (b) During placement and backfill of underdrain systems;
  - (c) During placement of geotextiles and all filter media;
  - (d) During construction of appurtenant conveyance systems such as flow diversion structures, pre-filters and filters, inlets, outlets, orifices, and flow distribution structures; and
  - (e) Upon completion of final grading and establishment of permanent stabilization.
- (6) For open channel systems:
  - (a) During excavation to subgrade;
  - (b) During placement and backfill of underdrain systems for dry swales;
  - (c) During installation of diaphragms, check dams, or weirs; and
  - (d) Upon completion of final grading and establishment of permanent stabilization.
- (7) For nonstructural practices – upon completion of final grading, the establishment of permanent stabilization, and before issuance of use and occupancy approval.

(c) Final inspection reports. A final inspection shall be conducted by the City upon completion of the ~~[storm-water]~~ stormwater management facility to determine if the completed work is constructed in accordance with the approved plan and this article. ~~[As-built" certification by a registered professional engineer licensed in Maryland is also required to certify that the facility has been constructed as shown on the "as built" plans and meets approved plans and specifications. The developer will receive written notification of the results of the final inspection. The city shall maintain a permanent file of inspection reports.]~~ If, after an inspection by the City, the condition of a [storm-water] stormwater management facility presents an immediate danger to the public health or safety, because of an unsafe condition or improper maintenance, the City shall take action as may be necessary to protect the public and make the facility safe. Any cost incurred by the City shall be assessed against the owner(s), as provided in section 8-30[31](b)(3).

(d) The City of Gaithersburg may, for enforcement purposes, use any one or a combination of the following actions:

- (1) A notice of violation and or a municipal infraction citation shall be issued specifying the need for a violation to be corrected if stormwater management plan noncompliance is identified;
- (2) A stop work order shall be issued for the site by the City of Gaithersburg if a violation persists;
- (3) Bonds, securities, and/or project permits may be withheld or the case may be referred for legal action if reasonable efforts to correct the violation have not been undertaken; or

(e) Any step in the enforcement process may be taken at any time, depending on the severity of the violation.

(f) Once construction is complete, as-built plan certification shall be submitted by either a professional engineer or professional land surveyor licensed in the State to ensure that constructed stormwater management practices and conveyance systems comply with the specifications contained in the approved plans. At a minimum, as-built certification shall include a set of drawings comparing the approved stormwater management plan with what was constructed. The City of Gaithersburg may require additional information.

(g) The City of Gaithersburg shall submit notice of construction to the Administration on a form supplied by the Administration for each stormwater management practice within 45 days of construction completion. If BMPs requiring [SCD] approval from the District are constructed, notice of construction completion shall also be submitted to the District [appropriate SCD].

~~[(d) Inspection for preventive maintenance.~~

- ~~(1) Preventive maintenance shall be ensured through inspection of all infiltration systems, retention or detention structures by the city. The inspection shall occur during the first year of operation and at least once every three (3) years thereafter.~~
- ~~(2) Inspection reports shall be maintained by the city on all retention and detention structures shall include the following:~~
  - ~~a. The date of inspection;~~
  - ~~b. Name of inspector;~~
  - ~~c. The condition of:~~
    - ~~1. Vegetation;~~
    - ~~2. Fences;~~
    - ~~3. Spillways;~~
    - ~~4. Embankments;~~
    - ~~5. Reservoir area;~~
    - ~~6. Outlet channels;~~
    - ~~7. Underground drainage;~~
    - ~~8. Sediment load; or~~



- ~~9. Any other item that could affect the proper function of the storm water management system.~~

~~d. Description of needed maintenance.~~

- ~~(3) If, after an inspection by the city, the condition of a storm water management facility presents an immediate danger to the public health or safety, because of an unsafe condition or improper maintenance, the city shall take action as may be necessary to protect the public and make the facility safe. Any cost incurred by the city shall be assessed against the owner(s), as provided in section 8-26.]~~

**Sec. 8-30[31]. Maintenance [Permits].**

(a) Maintenance Inspection

(1) The City of Gaithersburg shall ensure that preventative maintenance is performed by inspecting all stormwater management systems. Inspection shall occur during the first year of operation and at least once every 3 years thereafter. In addition, a maintenance agreement between the owner and the City of Gaithersburg shall be executed for privately owned stormwater management systems as described in 8-30(b) of this section.

(2) Inspection reports shall be maintained by the City of Gaithersburg for all stormwater management systems.

(3) Inspection reports for stormwater management systems shall include the following:

- a. The date of inspection;
- b. Name of inspector;
- c. The condition of:
  - 1. Vegetation or filter media;
  - 2. Fences or other safety devices;
  - 3. Spillways, valves, or other control structures;
  - 4. Embankments, slopes, and safety benches;
  - 5. Reservoir or treatment areas;
  - 6. Inlet and outlet channels or structures;
  - 7. Underground drainage;
  - 8. Sediment and debris accumulation in storage and forebay areas;
  - 9. Any nonstructural practices to the extent practicable; and
  - 10. Any other item that could affect the proper function of the stormwater management system.

d. Description of needed maintenance.

(4) After notification is provided to the owner of any deficiencies discovered from an inspection of a stormwater management system, the owner shall have 30 days or other time frame mutually agreed to between the City of Gaithersburg and the owner to correct the deficiencies. The City of Gaithersburg shall then conduct a subsequent inspection to ensure completion of the repairs.

(5) If repairs are not undertaken or are not found to be done properly, then enforcement procedures following 8-30(b)(3) of this section shall be followed by City of Gaithersburg.

(6) If, after an inspection by the City of Gaithersburg, the condition of a stormwater management facility presents an immediate danger to the public health or safety, because of an unsafe condition or improper maintenance, the City of Gaithersburg may take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the City shall be assessed against the owner(s), as provided in section 8-30(3).

**(b[~~a~~]) Maintenance agreement.**

- (1) Prior to the issuance of any building permit for which ~~[storm-water]~~ stormwater management is required, the City shall require the applicant or owner to execute an inspection and maintenance agreement binding on the owner and all subsequent owners of land served by the private ~~[storm-water]~~ stormwater management facility. Such agreement shall provide for access to the facility at reasonable times for regular inspection by the City or its authorized representative and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any provisions established.
- (2) The agreement shall be recorded by the applicant and/or owner in the land records of the county.
- (3) The agreement shall also provide that, if after notice by the City to correct a violation requiring maintenance work and satisfactory corrections are not made by the owner(s) within a reasonable period of time (thirty (30) days maximum), the City may perform all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the cost of the work and any penalties and there shall be a lien on the property, which may be placed on the tax bill and collected as ordinary taxes by the City. The agreement may also provide for the posting of a bond or other security to cover maintenance work should the owners fail to provide the required maintenance.

**(c[~~b~~]) Maintenance responsibility.**

- (1) The owner of the property on which work has been done pursuant to this article for private ~~[storm-water]~~ stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, wells, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such repairs or restorations, and maintenance shall be in accordance with approved plans.

A maintenance schedule shall be developed for the life of any ~~[storm-water]~~ stormwater management facility and shall state the maintenance to be completed, the time period for completion and who shall perform the maintenance. This maintenance schedule shall be printed on the approved ~~[storm-water]~~ stormwater management plan.

**Sec. 8-~~31~~<sup>32</sup>. Appeals.**

Any person aggrieved by the action of any official charged with the enforcement of this article, as the result of the disapproval of a properly filed application for a permit, issuance of a written notice of violation or an alleged failure to properly enforce the article in regard to a specified application, shall have the right to appeal the action to the City board of appeals. The appeal shall be filed in writing within thirty (30) days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based and shall be processed in the manner prescribed for hearing administrative appeals contained in Chapter 24 of the City Code.

#### **Sec. 8-32. Severability.**

If any portion of this article is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall not affect the validity of the remaining portions of this Ordinance. It is the intent of the City of Gaithersburg that this Ordinance shall stand, even if a section, subsection, sentence, clause, phrase, or portion may be found invalid.

#### **Sec. 8-33[34]. Penalties.**

~~[Violations of this article are declared to be municipal infractions and enforceable pursuant to the provisions of section 1-9. The maximum penalty for each initial and repeat violation shall be established by the city council.]~~ Any person convicted of violating the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment not exceeding 1 year or both for each violation with costs imposed in the discretion of the court. Each day that a violation continues shall be a separate offense.

In addition thereto, the City may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2001 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
Sidney Katz, MAYOR and  
President of the Council

ORDERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2001. APPROVED/DISAPPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Sidney Katz, MAYOR and  
President of the Council

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2001, and that the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2001. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
David B. Humpton, City Manager